

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

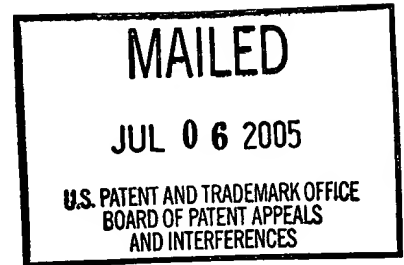
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER THOMPSON, BRIAN F. BEATON,
CLIFFORD P. GROSSNER, DOUGLAS E. LIVERSIDGE,
ROMAN ROMANIUK, COLIN D. R. SMITH,
JAMES F. ZDRALEK, JEAN J. BOUCHARD,
STEPHANE F. FORTIER and L. LLOYD WILLIAMS

Appeal No. 2005-1132
Application No. 09/738,294

ON BRIEF



Before JERRY SMITH, RUGGIERO, and DIXON, Administrative Patent Judges.

SMITH, JERRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-23, which constitute all the claims in the application.

The disclosed invention pertains to methods and systems for facilitating collaboration among geographically-dispersed team members using a distributed application that provides a virtual team environment. In accordance with the invention, dynamically maintained presence and availability information respecting each member of the team for communications over at least a Switched Telephone Network (STN) is obtained.

Representative claim 1 is reproduced as follows:

1. A method of initiating communications using a persistent virtual team environment instantiated by a collaboration services suite for facilitating collaboration between members of a team, the method comprising steps of:

obtaining dynamically maintained presence and availability information respecting each member of the team for communications over at least a Switched Telephone Network (STN);

providing a graphical interface adapted to enable a person to interact with the virtual team environment to select each one of: a personal identifier associated with a respective team member, and one of the plurality of different types of communications; and

initiating a new communications session using the selected personal identifier and type of the communications.

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The examiner relies on the following references:

Lane	5,437,009	July 25, 1995
Tang et al. (Tang)	5,793,365	Aug. 11, 1998
Klein et al. (Klein)	5,995,492	Nov. 30, 1999

Claims 1-23 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Tang in view of Klein with respect to claims 1-22, and the examiner adds Lane with respect to claim 23.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

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It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-23. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,

776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

We consider first the rejection of claims 1-22 based on Tang and Klein. Appellants have indicated that these claims may

stand or fall together as a single group [brief, page 3]. With respect to representative independent claim 1, the examiner finds that Tang teaches the claimed invention except that Tang does not clearly show how each member of the team communicates over at least an STN. The examiner cites Klein as teaching a virtual switching point in a public switched telephone. The examiner finds that it would have been obvious to the artisan to use Klein's virtual switching feature in Tang's communication devices [answer, pages 3-4].

Appellants argue that Tang fails to teach or suggest any means for obtaining the presence, availability and activity information respecting a workgroup member's engagement (or availability for engagement) in communications through a Switched Telephone Network such as the Public Switched Telephone Network (PSTN). Appellants assert that Tang does not even attempt to solve the problem of providing meaningful presence and availability information for regular telephone communications. With respect to Klein, appellants argue that Klein is completely silent with respect to obtaining presence and availability information respecting users of the communications system.

Appellants also argue that there is no motivation in either Tang or Klein to support the modification proposed by the examiner [brief, pages 5-10].

The examiner responds that Tang does in fact teach the use of a telephone and that the users in Tang must be connected to a network such as LAN, WAN and the Internet in order to communicate with other users throughout the network. The examiner asserts that it was well known in the art that the computers on such networks are coupled to the network through modems which are connected to telephone lines, and that these telephone lines must connect through the Public Switched Telephone Network. Thus, it is the position of the examiner that the connection of the computers to a network in Tang, such as the Internet, must rely, in part, on the PSTN. The examiner also reiterates his position that Klein teaches the usage/connection between telephone lines and the Network [answer, pages 11-12].

We will sustain the examiner's rejection of claims 1-22. Although we agree with appellants that Klein appears to be totally unrelated to the claimed invention and provides no motivation for the combination proposed by the examiner, we

nevertheless agree with the examiner's findings that Tang essentially teaches the invention of claim 1 all by itself. In the response to arguments section of the answer, the examiner notes that the computers in Tang, which can communicate with each other over a network such as the Internet, rely on an STN for completing connections between computers. Thus, even though Tang may be unable to determine if a telephone is currently being used without dialing the number, claim 1 does not require such a feature. Claim 1 only requires that presence and availability information be maintained over at least an STN. Since the availability of the computers in Tang is communicated to other computers on the network, and since the computers are connected to the network by telephone lines as noted by the examiner, we find that the language of claim 1 is met by the network of Tang when the connections to the network are made by conventional telephone lines. The examiner's findings in the response to arguments section of the answer are persuasive that the computers in Tang obtain presence and availability information over at least an STN. Appellants did not file a reply brief to contest these findings of the examiner. Therefore, we find that the

examiner has made persuasive findings in support of unpatentability which findings have not been rebutted by appellants. Even though we have determined that the teachings of Klein are not necessary to support the rejection, the rejection based on the collective teachings of Tang and Klein is still appropriate.

We also agree with the examiner that Tang teaches a visual indication of the availability of a team member for telephone communications [column 6, lines 47-50]. The indication of telephone use as suggested by Tang suggests obtaining that information using at least an STN as claimed.

We now consider the rejection of claim 23 based on Tang, Klein and Lane. The examiner finds that Tang and Klein teach the invention of claim 23 except for deriving the presence and availability information using Common Channel System (CCS) signaling of the STN. The examiner cites Lane as teaching this feature. The examiner finds that it would have been obvious to the artisan to use Lane's CCS network in Tang's communication system [answer, page 10].

Appellants argue that there is no motivation for making the modification proposed by the examiner, and the combination

fails to meet the claimed feature of monitoring CCS signaling and deriving presence and availability information from the monitored CCS signaling [brief, pages 10-12].

The examiner responds that the CCS signaling network of Lane clearly shows displaying status information of a network. The examiner reiterates that it would have been obvious to the artisan to use the CCS signaling network of Lane to monitor the status of devices in Tang [answer, page 12].

We will sustain the examiner's rejection of claim 23 for essentially the reasons argued by the examiner in the answer. As noted by the examiner, CCS can determine the status of a network as taught by Lane. We agree with the examiner that it would have been obvious to the artisan to use CCS as broadly recited in claim 23 to determine the status (presence and availability) of network components in Tang. As noted above, we find that it is unnecessary to rely on Klein in support of the examiner's rejection.

In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-23 is affirmed.

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